

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

Matthew Kelly & Davena J. Wiley Adams

Case No. 11-80992
Chapter 13

S.S. Nos. xxx-xx-9789 & xxx-xx-8405

Mailing Address:
5214 Kerley Road Unit A3
Durham NC 27705

Debtors.

OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY

NOW RESPOND the Debtors, by and through counsel undersigned, and hereby oppose the Motion filed by Northside Auto Sales ("Northside" hereinafter), and dated July 26, 2011. With respect to the specific issues raised in the Motion, the Debtors offer the following:

1. On February 12, 2011, the Debtor entered into a Retail Installment Agreement Contract with Northside for the purpose of purchasing a 2002 Chevrolet Trailblazer.
2. On or about June 11, 2011, the vehicle was repossessed by Northside.
3. On June 21, 2011, the Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code. Northside was listed as a creditor in the filed petition.
4. Northside subsequently filed a Motion for Relief From Stay, seeking court approval for continued possession and prospective liquidation of the Debtor's vehicle, and further requested the court to waive Rule 4001(a)(3).
5. In its Motion, Northside alleges that it is the holder of a "validly perfected, first priority purchase-money security interest in the Vehicle, as noted on the Certificate of Title".

6. The vehicle title attached to Northside's Motion shows that the lien was established July 15, 2011, after the filing of the Debtor's bankruptcy petition.
7. Accordingly, Northside's purported lien is void as a violation of the 11 U.S.C. § 362(a)(4). If the lien is not void, it is avoidable as a post-petition transaction pursuant to 11 U.S.C. § 549.
8. If the lien is void, the prepetition repossession is a preference and should be avoided pursuant to 11 U.S.C. § 547.
9. Accordingly, the Motion should be denied and the vehicle turned over to the Debtor's estate for the benefit of all unsecured creditors. The Debtor will seek turnover of the vehicle by separate adversary proceeding.

WHEREFORE, the Debtors pray that the Court deny Northside's Motion, set this matter for hearing, and provide such other relief as to the Court seems just and proper.

This the 4th day of August, 2011.

**THE LAW OFFICES OF JOHN T.
ORCUTT, P.C.**

/s/ Koury L. Hicks

Koury L. Hicks
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

Matthew Kelly & Davena Adams Adams

S.S. Nos. xxx-xx-9789 & xxx-xx-8405

Mailing Address:

RKR, Inc. T/A Northside Auto Sales
3109 Poplarwood Court, 115
Raleigh, NC 27604

Case No. 11-80992

Chapter 13

Debtors.

CERTIFICATE OF SERVICE

I, Koury Hicks, of the Law Offices of John T. Orcutt, P.C., do hereby certify I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age; and that on this date, I served copies of the foregoing Opposition to Motion, by regular U.S. mail, upon the parties set forth below:

Matthew Kelly & Davena Adams Adams
RKR, Inc. T/A Northside Auto Sales
3109 Poplarwood Court, 115
Raleigh, NC 27604

Richard M. Hutson
Chapter 13 Trustee

Michael West
U.S. Bankruptcy Administrator

James W. Sprouse, Jr.
Attorney for RKR, Inc. T/A Northside Auto Sales
3109 Poplarwood Court, Suite 115
Raleigh NC 27604

Northside Auto Sales
9000 Centreville Road
Manassas VA 20110

THUS served on this date, August 4, 2011.

/s/ Koury L. Hicks
Koury Hicks